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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MAXINE G. BITTERS,

Plaintiff and Appellant,

v.

JONATHAN G. RUTLEDGE et al.,

Defendants and Respondents.

E032427

(Super.Ct.No. RIC 352193)

OPINION

APPEAL from the Superior Court of Riverside County. Gary B. Tranbarger,
Judge. Affirmed.

Dabney B. Finch and Mitchell S. Wagner for Plaintiff and Appellant.

Law Office of Robert W. Scott and Robert W. Scott for Defendants and
Respondents.

1. Introduction

Plaintiff Maxine G. Bitters appeals from the trial court's judgment dismissing her cause of action for financial abuse of an elder. Plaintiff claims the trial court erred in excluding evidence of her emotional vulnerability and granting defendants Jonathan G.

Rutledge and Barbara Rutledge's (collectively defendants) motion for directed verdict. Plaintiff also claims the trial court erred in denying her motion for costs.

We conclude that the trial court did not abuse its discretion in excluding evidence that was not relevant to plaintiff's cause of action. We also conclude that the trial court properly granted the motion for directed verdict because plaintiff had failed to offer substantial evidence to support her claim that defendants acted in bad faith. Based on the court's mixed disposition, the court acted well within its authority in denying plaintiff's motion for costs. We affirm the judgment.

2. Factual and Procedural History

In 1998, plaintiff, who was about 65 years of age at the time, purchased her home in Temecula, California, for \$163,000. Plaintiff paid \$55,000 down and financed \$108,000. In the following year, after plaintiff fell behind in her mortgage payments, the house went into foreclosure. Jonathan G. Rutledge, who was a youth pastor at the Way of Life church, and his wife, Barbara, befriended plaintiff at church. After plaintiff informed them of her situation, defendants offered to help plaintiff by paying the \$11,352.40 in arrears and assuming ownership of the house. They offered to allow plaintiff to remain in the house for the rest of her life in exchange for transferring title to them and paying them rent. After the parties agreed to the transaction, plaintiff signed a deed conveying title to her property to defendants. Defendants obtained a personal loan and paid off the arrears. Defendants, however, were unable to obtain a mortgage loan

because plaintiff continued to live in the house. Nevertheless, based on their oral agreement, they paid \$1,060 in mortgage payments and plaintiff paid \$900 in rent.

When plaintiff fell behind in her rent payments, defendants sent her a letter and other notices terminating the rental agreement and demanding her to vacate the premises. After plaintiff discovered that defendants had never assumed her mortgage loan or acquired a new loan, she began to send \$1,060 per month directly to the mortgage company. However, when the mortgage company discovered the transfer in ownership, it required plaintiff to pay the balance of her loan.

In December of 2000, plaintiff filed her lawsuit against defendants for fraud, financial abuse of an elder, and rescission to recover title to her Temecula home. Defendants filed an unlawful detainer action against plaintiff. In September of 2001, the trial court consolidated the two lawsuits.

On January 31, 2001, after the parties presented their evidence, plaintiff dismissed her fraud cause of action and moved for nonsuit on defendants' unlawful detainer action. Defendants voluntarily dismissed their unlawful detainer action. On the next day, the trial court directed a verdict in plaintiff's favor on her cause of action for rescission and in defendants' favor on the elder abuse claim. The judgment required that defendants execute a deed transferring title back to plaintiff and that plaintiff reimburse defendants for their costs.

3. Elder Abuse

Plaintiff claims the trial court erred in granting defendants' motion in limine to exclude evidence of her son's suicidal tendencies and medical expenses. Plaintiff argues that the evidence was relevant to show her fragile emotional state and defendants' bad faith in taking advantage of her condition. Plaintiff also claims that the trial court erred in granting defendants' motion for directed verdict or nonsuit on her financial elder abuse cause of action.

In her complaint, plaintiff included a claim under the Elder Abuse and Dependent Adult Civil Protection Act (hereafter "the Act").¹ The Legislature enacted the Act to protect elders and dependent adults from abuse, neglect, and abandonment.² Under the Act, anyone living in the state who is 65 years of age or older qualifies as an "elder."³ The term "[a]buse of an elder or a dependent adult" includes the "[p]hysical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering."⁴

¹ Welfare and Institutions Code section 15600 et seq. All further statutory references will be to this code unless otherwise stated.

² See section 15600, subdivision (a); see also *Moon v. Guardian Postacute Services, Inc.* (2002) 95 Cal.App.4th 1005, 1015, citing *Delaney v. Baker* (1999) 20 Cal.4th 23, 33.

³ Section 15610.27.

⁴ Section 15610.07; see also *Marron v. Superior Court* (2003) 108 Cal.App.4th 1049, 1057.

Section 15610.30 defines the term “financial abuse.” That section provides in part:

“(a) ‘Financial abuse’ of an elder or dependent adult occurs when a person or entity does any of the following :

“(1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

“(2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

“(b) A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith.

“(1) A person or entity shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his or her representative.

“(2) For purposes of this section, a person or entity should have known of a right specified in paragraph (1) if, on the basis of the information received by the person or entity or the person or entity’s authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in paragraph (1).”

In her complaint, plaintiff alleged that defendants knew or should have known that she had the right to have title to the Temecula property reconveyed to her. Hence, plaintiff's theory was that defendants acted in bad faith.

A. Motion in Limine

Defendants filed a motion in limine to exclude all references to plaintiff's son's suicide threat and medical expenses. Defendants argued that, under Evidence Code section 352, the probative value of this evidence was substantially outweighed by the probability that its admission would create a substantial danger of undue prejudice, confusing the issues, and misleading the jury. Defendants specifically argued that, because these reasons could not have been used by plaintiff to prevent the foreclosure, they were irrelevant to establish bad faith.

In her opposition to defendants' motion, plaintiff argued that the evidence concerning her son was highly probative to show her mental state and defendants' bad faith. She contended that defendants knew that plaintiff was under added stress because of her son's illness and his medical expenses, yet took advantage of her fragile emotional state.

The trial court ruled that plaintiff could not introduce the evidence to argue that a family or financial emergency caused the foreclosure. The trial court reserved its ruling on whether plaintiff could present the evidence to show her mental state at the time of the transaction. The court later instructed plaintiff to not refer to her son's illness or medical expenses during her testimony. The court explained that such matters were not relevant

in regards to their impact on plaintiff's financial situation. It appears that the court did not rule specifically on the admissibility of the evidence to show plaintiff's mental state.

Nevertheless, based on the court's broad admonition to plaintiff not to discuss her son's illness or medical expenses, we will assume that the court also found the evidence irrelevant to show bad faith under section 15610.30.

Under Evidence Code section 352, the trial court exercises broad discretion to exclude evidence where its probative value is substantially outweighed by its prejudicial effect.⁵ Before conducting the balancing test under Evidence Code section 352, the court must first determine whether the evidence is relevant.⁶ Only relevant evidence is admissible.⁷ Evidence is relevant if it has any tendency in reason to prove or disprove a disputed material fact.⁸ A trial court's ruling on the admissibility of evidence is reviewed for an abuse of discretion.⁹

⁵ See *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 674; *Benson v. Honda Motor Co.* (1994) 26 Cal.App.4th 1337, 1344.

⁶ See *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1136.

⁷ Evidence Code section 350.

⁸ Evidence Code section 210; *Vorse v. Sarasy* (1997) 53 Cal.App.4th 998, 1008.

⁹ See *Benson v. Honda Motor Co.*, *supra*, 26 Cal.App.4th at page 1343; *Robinson v. Grossman* (1997) 57 Cal.App.4th 634, 647.

In demanding a different standard of review, plaintiff argues that defendants' motion in limine was tantamount to a motion for nonsuit.¹⁰ The trial court, however, did not prevent plaintiff from presenting other evidence to support her cause of action for elder abuse, including evidence of the transaction itself. The proper standard, therefore, is abuse of discretion.

In applying this standard, we find no abuse of discretion. During the initial hearing on defendants' motion in limine, the court observed that section 15610.30 did not require it to consider the external circumstances of the elder's life.

The court's observation was consistent with the statutory language. "We assign the statutory language its plain and commonsense meaning, attempting to effectuate the Legislature's intent. [Citation.] If the statutory language is not ambiguous, we presume the Legislature meant what it said, and we apply the plain meaning of the statute without resort to extrinsic sources. [Citation.]"¹¹ Section 15610.30, subdivision (b), refers to bad faith only in relation to the abuser's taking, secreting, appropriating, or retaining possession of property. While the next paragraph takes into consideration the abuser's knowledge, the statutory language specifies that the knowledge that is relevant is knowledge of the elder's right to have the property transferred or made readily available

¹⁰ See *Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 26-28 (motion in limine effectively precluded all evidence in support of cause of action).

¹¹ *In re Marquez* (2003) 30 Cal.4th 14, 19-20.

to her.¹² Apart from the abuser's knowledge concerning the elder's right to the property, the abuser's subjective knowledge on other matters is irrelevant to a determination of whether the abuser acted with bad faith under section 15610.30. It is irrelevant, therefore, whether the abuser was aware of other circumstances of the elder's life, even circumstances that suggest that the elder was under additional emotional or financial stress.

What was relevant here was whether defendants knew or should have known that plaintiff was entitled to have the deed to the Temecula home. As the trial court impliedly if not explicitly found, evidence of plaintiff's son's mental illness and medical expenses were not relevant to the determination of whether defendants acted in bad faith.

Furthermore, during the evidentiary hearing, defendants noted that plaintiff was unable to substantiate the evidence of her son's illness or medical expenses. Defendants specifically pointed to the fact that plaintiff could not name her son's doctors or remember the amount of his medical expenses. Defendants also explained that, if evidence of plaintiff's underlying reasons for her foreclosure was admissible, then defendants' evidence of other circumstances, such as plaintiff's gambling problem, was also admissible. The admission of evidence of these collateral matters likely would have

¹² Section 15610.30, subdivision (b)(1).

created a substantial danger of causing undue prejudice, confusing the issues, and misleading the jury.¹³

In sum, we conclude that the plaintiff's evidence concerning her son was not relevant to show defendants' bad faith under section 15610.30. Even if relevant, any probative value would have been substantially outweighed by its prejudicial effect. The trial court, therefore, did not abuse its discretion in preventing plaintiff from testifying concerning her son's illness and medical expenses.

B. Motion for Directed Verdict

Plaintiff claims the trial court erred in granting defendants' motion for directed verdict on the elder abuse cause of action. The trial court granted the motion on the ground that defendants did not keep the deed to the Temecula home in bad faith because plaintiff did not and was not able to repay them for their out-of-pocket costs. Plaintiff argues that the trial court, in making this finding, failed to consider evidence that she had obtained a loan to pay defendants.

In reviewing the trial court's judgment directing a verdict for defendants, we disregard all conflicting evidence and we view the evidence, and any legitimate inferences drawn from the evidence, in a light most favorable to plaintiff.¹⁴ We then determine whether there is substantial evidence to support a verdict for plaintiff in her

¹³ Evidence Code section 352.

¹⁴ *Margolin v. Shemaria* (2000) 85 Cal.App.4th 891, 895; *CC-California Plaza Associates v. Paller & Goldstein* (1996) 51 Cal.App.4th 1042, 1050-1051.

elder abuse claim.¹⁵ Substantial evidence is evidence that is reasonable, credible, and of solid value.¹⁶ “Inferences may constitute substantial evidence as long as they are the product of logic and reason rather than speculation or conjecture.”¹⁷

In claiming elder abuse, plaintiff alleged that defendants took and retained her property in bad faith. Under the Act, the person acts in bad faith if he knew or should have known that the elder was entitled to the property.¹⁸ Bad faith, therefore, can be established by actual or constructive knowledge. A person is deemed to have constructive knowledge if a reasonable person with the information received would consider it obvious that the elder was entitled to the property.¹⁹

In this case, the trial court granted the motion on the ground that plaintiff could not establish that it was obvious to a reasonable person that she was entitled to the return of the Temecula property. The court noted that, while it may have been obvious that rescission was necessary to “undo the deal,” it was not obvious as to how to go about fixing the “mess.”

¹⁵ *Margolin v. Shemaria*, *supra*, 85 Cal.App.4th at page 895; *Williams v. City of Belvedere* (1999) 72 Cal.App.4th 84, 89.

¹⁶ *Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1100.

¹⁷ *Oregel v. American Isuzu Motors, Inc.*, *supra*, 90 Cal.App.4th at page 1101.

¹⁸ Section 15610.30, subdivision (b)(1).

¹⁹ Section 15610.30, subdivision (b)(2).

In October of 2000, plaintiff called Barbara Rutledge and told her that she wanted the deed to the Temecula home. Plaintiff also promised to reimburse defendants for paying the arrears on her mortgage loan. Based on this evidence, plaintiff essentially contends that a reasonable person would consider it obvious that she had the right to have defendants return the deed to the house.

Here, there were several factors that made the solution far from obvious. Plaintiff's offer was simply her unsubstantiated promise. At the time, plaintiff did not know the amount defendants had paid to save her house from foreclosure. Also, while plaintiff attempted to obtain another home loan, plaintiff did not inform Barbara Rutledge of this fact during their conversation. The only information defendants had was plaintiff's promise to repay them, despite the facts that she neither knew how much she owed nor had the money in hand. As noted by the court, plaintiff would not have been able to obtain the money through another loan unless she reacquired title to the property.

Additionally, defendants may have been entitled to more than the amount paid in arrears. Based on their oral rental agreement, plaintiff paid \$900 in rent while defendants paid \$1,060 in mortgage payments. Defendants suffered a net loss of \$160 per month. Defendants also made other unanticipated payment, including the monthly association fees. Therefore, another sloppy trade may not have restored the parties to their former position.²⁰

²⁰ See *Gardiner Solder Co. v. SupAlloy Corp., Inc.* (1991) 232 Cal.App.3d 1537, 1544.

The evidence revealed that the informal arrangement between friends had turned into a tangled mess. Under the circumstances, plaintiff could not establish that any solution was obvious, let alone that defendants should have accepted her October 2000 offer to reconvey title to the house. We therefore conclude that the trial court properly granted defendants' motion for directed verdict.

4. Costs

In her third and final claim, plaintiff argues that the court abused its discretion in denying her motion for costs.

After considering plaintiff's motion and the parties' briefs, the trial court found that neither plaintiff nor defendants were the prevailing party under Code of Civil Procedure section 1032. The court denied plaintiff's motion for costs.

Under Code of Civil Procedure section 1032, the prevailing party is entitled to recover costs as a matter of right except as otherwise provided by statute.²¹ “‘Prevailing party’ includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” “. . . [T]he critical issue in determining which party has prevailed is ‘which

²¹ Code of Civil Procedure section 1032, subdivision (a)(4).

party realized its objectives in the litigation.’ [Citation.]”²² The trial court makes this determination and its decision will not be reversed absent a clear abuse of discretion.²³

In this case, the trial court’s judgment reflected a mixed disposition. Plaintiff voluntarily dismissed her cause of action for fraud. Defendants voluntarily dismissed their unlawful detainer action. The court directed a verdict in plaintiff’s favor on the cause of action to recover the property and the court directed a verdict in defendants’ favor on the claim for elder abuse.

The only part of judgment decidedly in plaintiff’s favor was the court’s directed verdict for rescission. The court, however, ordered rescission on the basis of mutual consent.²⁴ In ordering rescission, the court required defendants to execute a deed to transfer title to the Temecula home to plaintiff. The court also ordered plaintiff to execute a promissory note secured by a deed of trust in the amount of approximately \$16,000.

Plaintiff nevertheless contends that, because she recovered title to her home, which she estimated as having approximately \$100,000 in equity, she obtained the net monetary recovery. Both parties, however, agreed to rescind the original transaction.

²² *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1017.

²³ See *Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1298; *Heller v. Pillsbury Madison & Sutro* (1996) 50 Cal.App.4th 1367, 1395.

²⁴ See Civil Code section 1689, subdivision (a); see also *Cione v. Foresters Equity Services, Inc.* (1997) 58 Cal.App.4th 625, 640, footnote 14.

There was no determination as to whether the original transfer of title from plaintiff to defendants was legally binding. Based on the rescission by mutual consent, it is unclear what plaintiff actually lost and what plaintiff ultimately gained. The court simply attempted to restore the parties to their original positions.²⁵

As a practical matter, plaintiffs may have been successful in canceling the deed, but defendants were equally successful in obtaining a directed verdict on plaintiff's elder abuse claim.²⁶ On this record, the court acted well within its discretion in finding that neither party prevailed.²⁷

5. Disposition

We affirm the judgment. Defendants shall recover their costs on appeal.

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/s/ Gaut
J.

We concur:

/s/ Hollenhorst
Acting P.J.

/s/ King
J.

²⁵ *Gardiner Solder Co. v. SupAlloy Corp., Inc., supra*, 232 Cal.App.3d at page 1544.

²⁶ See *Coltrain v. Shewalter* (1998) 66 Cal.App.4th 94, 108; *Adler v. Vaicius* (1993) 21 Cal.App.4th 1770, 1776-1777.

²⁷ See *Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1574.